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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/543,153	01/13/2006	Stephane Lefort	J7164(C)	9751

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EXAMINER

SUTTON, DARRYL C

ART UNIT	PAPER NUMBER
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1612

NOTIFICATION DATE	DELIVERY MODE
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11/10/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary	Application No. 10/543,153	Applicant(s) LEFORT ET AL.	
	Examiner DARRYL C. SUTTON	Art Unit 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6,7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,7 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the amendment filed 07/10/2009. New claim 9 has been added. Claims 2-5 and 8 have been canceled.

Applicant's arguments filed 07/10/2009 have been fully considered. Rejections and/or objections not reiterated from previous Office Actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vernon (US 5,976,506) in view of Riley (WO 2003/030850).

Vernon is discussed previously, see Non-final office action, page 3. Further, Vernon teaches that the compositions may contain one or more components

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conventionally found in oral compositions, including fluoride-containing compounds (column 6, lines 8-16).

Vernon does not teach a specific combination of perlite, ground natural chalk and sodium monofluorophosphate; or the specific diameter of ground natural chalk; or amounts of each component.

Riley et al. is discussed previously, see Non-final office action pages 5 and 6. Further, Riley et al. teach the term 'chalk' relate calcium carbonates, including fine natural ground chalk, FNGC (page 1, lines 26-29). The FNGC particles have a median particle size ranging from 1-15 μm (page 8, lines 12-17). Anti-caries actives such as sodium monofluorophosphate, SMFP, can be added to the oral composition (page 10, lines 6-10), i.e. SMFP is a fluoride-containing compound that is conventionally found in oral compositions. Typically, SMFP is the fluoride source when it comes to chalk compositions, since the alternative, sodium fluoride, reacts with calcium carbonate to form insoluble calcium fluoride which has limited anti-caries activity. (page 10, lines 12-16).

Riley et al. does not teach a composition comprised of perlite.

Generally, it is *prima facie* obvious to select a known material for incorporation into a composition, based on its recognized suitability for its intended use. See MPEP 2144.07. Accordingly, it would have been obvious to use the fine natural ground chalk of Riley et al. in the composition of Vernon et al. as the source of chalk abrasive.

At the time of the invention, it would have been obvious to modify the composition suggested by combining Vernon and Riley et al. to include sodium

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monofluorophosphate as the fluoride-containing compound, since Vernon teaches incorporation of fluoride-containing compounds and since it will not react with the calcium carbonate of the chalk to form insoluble calcium fluoride, and will therefore retain its anti-carries activity as taught by Riley et al.

The prior art does not teach the specific weight percentage ranges of each component or the specific particle diameter of fine ground natural chalk. The prior art does not disclose the exact claimed values, but does overlap: in such instances even a slight overlap in range establishes a *prima facie* case of obviousness. In re Peterson, 65 USPQ2d 1379, 1382 (Fed. Cir. 2003). As cited in the Non-final office action, page 5, Vernon et al. teaches 0.7 to 99% by weight of perlite versus 0.01 to 20% of the instant claims; Riley et al. teach from 1 to 60% of fine ground natural chalk versus 5 to 60% of the instant claims, see page 5 of Non-final office action; and Riley et al. teach that the fine ground natural chalk has a median particle size from 1-15 μm versus a diameter of less than 20 μm of the instant claims.

Since the compositions suggested by combining Vernon and Riley et al. are comprised of substantially the same components in substantially the same amounts as the instant application, it would reasonably be expected to exhibit the claimed percentage polish and Relative Dental Abrasion of instant claims 6 and 7.

It would be obvious to apply the composition suggested by combining Vernon and Riley et al. to the teeth since it is an oral care composition.

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darryl C. Sutton whose telephone number is (571)270-3286. The examiner can normally be reached on M-Th from 7:30AM to 5:00PM EST or on Fr from 7:30AM to 4:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass, can be reached at (571)272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Darryl C Sutton/
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612